

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 112 OF 2008**

**SHIRIKA LA USAFIRI DAR ES SALAAM (UDA).....APPLICANT**  
**VERSUS**

**HAJI KHALFAN.....RESPONDENT**

(Application for an order to strike out notice of appeal  
from the decision of the High Court of Tanzania  
at Dar es Salaam)

(Chande, J.)

dated the 17<sup>th</sup> day of September, 2007  
in  
Civil Revision No. 7 of 2007

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**RULING**

5 & 19 December, 2008

**MUNUO, J.A.:**

In the Notice of Motion, the applicant, Shirika la Usafiri Dar es Salaam (UDA), through the services of Mr. Jovin Lyimo, learned advocate, seeks to strike out the Notice of Appeal against the decision of Chande, J. as he then was, in Civil Revision No. 7 of 2007 in the High Court of Tanzania at Dar es Salaam. The respondent, Haji Khalfan, appeared in person and resisted the application.

It is the contention of counsel for the applicant that the respondent has neither applied for, nor obtained leave to appeal so the intended appeal is incompetent as the appeal falls under section 5(1) (c) of the Appellate Jurisdiction Act, 1979, Cap 141 R.E. 2002 so in law, the intended appeal requires leave.

Counsel for the applicant deponed to an affidavit stating that the present matter commenced as Employment Cause No. 48 of 1993 in Kisumu Resident Magistrates' Court at Dar es Salaam. The respondent lost the employment cause application for costs. He then filed Civil Revision No. 7 of 2007 in the High Court to challenge the decision of the trial court on costs. Per the Ruling of the High Court, the learned judge upheld the decision of the trial costs because the bill of costs was time barred thence rendering the same incompetent. Chande, J. delivered the Ruling on the 17<sup>th</sup> September, 2007. Dissatisfied with the decision of the High Court, the respondent lodged his Notice of Appeal on the 28<sup>th</sup> September, 2007 as evidenced by annexure Ap-1B to the Notice of Motion.

It is the contention of counsel for the applicant, that since Civil Revision No. 7 of 2007 was in effect the first appeal against the Ruling of the Bill of Costs in Employment Cause No. 48 of 1993, the intended appeal would be a second appeal so the respondent should have applied for leave to appeal within 14 days from the date of the High Court Ruling on the 17<sup>th</sup> September, 2007. The lack of the statutory leave to appeal renders the Notice of Appeal the respondent lodged incompetent, counsel for applicant maintained.

He thence urged the Court to strike out the Notice of Appeal in question under Rule 82 of the Court of Appeal Rules, 1979 Cap 141 R.E. 2002 for failure to take an essential step, which is, to obtain leave to appeal within fourteen days of the decision of the High Court. He cited the cases of **Dr. Lubero Bakari Mvungi versus Al-Haji Anzuruni J. Mangula Civil Application No. 33 of 2007, Court of Appeal of Tanzania (unreported)** and **Frasim MRA versus Mashaka Abas and 2 Others, Civil Application No. 26 of 2008, (unreported)** wherein the Court struck out appeals for failure to take an essential step. In Dr. Lubero's case cited supra, a second appeal, leave to appeal had not been applied for. Hence the

Court struck out the Notice of Appeal under Rule 82 of the Court Rules, Cap 141 R.E. 2002. Likewise, in the case of **Frasim** *cited supra*, the Court struck out the Notice of Appeal for lack of leave to appeal as stipulated under the provisions of Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002.

The respondent was unrepresented. He filed a counter-affidavit arguing that the Notice of Appeal he lodged on the 28<sup>th</sup> September, 2007 was proper and should not be struck out. He said he did not obtain leave to appeal because the learned judge had been transferred to Arusha.

The issue is whether the Notice of Appeal filed by the appellant should be struck out for failure to take an essential step, that is, to obtain leave to appeal.

The matter is straight forward. The Notice of Appeal lodged by the respondent on the 28<sup>th</sup> September, 2007 is for a second appeal against the rejected bill of costs he lodged in Employment Cause No. 48 of 1993 in the Court of Resident Magistrate at Kisumu District.

Salaam. The second appeal falls under Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 so leave to appeal to this Court is mandatory.

The respondent should have applied for leave to appeal within 14 days of the decision of the High Court. This he failed to do. Under the circumstances, the application has merit. I accordingly strike out the Notice of Appeal under Rule 82 of the Court Rules, Cap 141 R.E. 2002 for lack of leave to appeal.

Costs to the applicant.

DATED at DAR ES SALAAM this 19<sup>th</sup> day of December, 2008.

E. N. MUNUO  
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(P. B. KHADAY)  
DEPUTY REGISTRAR